American Bankruptcy Institute Annual Spring Meeting

Simply the Vest: A Judicial Roundtable Discussion of Vesting and Why It Matters in Commercial and Consumer Reorganizations

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Simply the Vest:
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Program Materials

The "Simply the Vest" panel is intended to provide insight on a topic that has confounded bankruptcy judges and practitioners for decades: vesting. At least three sections of the Bankruptcy Code reference the vesting of property in the debtor upon plan confirmation, but nowhere does the Code define what it means for property to "vest." Some courts have determined that vesting equates to absolute ownership while others have recognized it as something less than full ownership but more than a mere transferal of property from the estate to the debtor. And once property does vest in the debtor, what happens to the estate? This panel explores these interesting and complicated issues.

Part I: Vesting & Why it Matters

I. Applicable Law

a. Vesting Provisions

i. Chapter 11: 11 U.S.C. § 1141

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

ii. Chapter 12: 11 U.S.C. § 1227

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

iii. Chapter 13: 11 U.S.C. § 1327

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

b. Definitions in Caselaw

The caselaw discussing vesting occurs more ordinarily in the chapter 13 than in the chapter 11 context. But several chapter 11 cases are instructive for understanding the standard. The chapter 11 cases generally hold that the bankruptcy estate ceases to exist upon confirmation unless the plan or confirmation order provides otherwise. *See, e.g.*, *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 587 (9th Cir. 1993) ("confirmation usually terminates the existence of the estate); *In re Baroni*, 36 F.4th 958, 972–73 (9th Cir. 2022) (bankruptcy courts must use "holistic approach" to determine whether the plan or confirmation order deviates from § 1141(b)'s normal rule); *In re Resorts Int'l, Inc.*, 372 F.3d 154, 164–65 (3d Cir. 2004) ("estate ceases to exist once confirmation has occurred) (internal citation omitted). These cases strongly suggest that vesting in the chapter 11 context means a transfer of *all* interests in estate property.

The courts to have discussed vesting in the chapter 13 context have arrived at remarkably different conclusions by employing at least three different theories: the (1) Estate Preservation Theory; (2) the Estate Replenishment Theory; *Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. 2000); *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008); and (3) the Estate Termination Theory; *In re Jones*, 420 B.R. 506, 515 (B.A.P. 9th Cir. 2009); *In re Cherry*, 963 F.3d 717, 718 (7th Cir. 2020). *See* Part II, *infra*.

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c. The Bankruptcy Estate

With a working understanding of vesting, we have to determine what it is that actually vests. The Bankruptcy Code defines "property of the estate."

i. Generally Applicable Provision: 11 U.S.C. § 541

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

> **(1)** Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
>
> . . .
>
> **(6)** Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
>
> **(7)** Any interest in property that the estate acquires after the commencement of the case.

ii. Automatic Stay: 11 U.S.C. § 362

The automatic stay protects property of the estate as defined by § 541. Once property no longer belongs to the estate, the automatic stay terminates. *But see* 11 U.S.C. § 362(a)(5)–(6) (protecting property of the debtor).

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

. . .

> **(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> **(4)** any act to create, perfect, or enforce any lien against property of the estate;
>
> **(5)** any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

. . .

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

> **(1)** the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate.

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II. Vesting by Chapter

a. Traditional Chapter 11

i. Property of the Estate: 11 U.S.C. §§ 1115 and 1141(b)

The Bankruptcy Code fixes property of the estate as of the petition date. In addition to § 541, §§ 1115 (individual debtors) and 1141 (all chapter 11 cases) apply as well.

11 U.S.C. § 1115

(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

> **(1)** all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and
> **(2)** earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

ii. Timing of Vesting: 11 U.S.C. § 1141(b)

As previously discussed, § 1141(b) provides a default rule that confirmation vests property of the estate in the debtor upon confirmation unless the plan or confirmation order provides otherwise. The language of § 1141(b) strongly suggests that the chapter 11 bankruptcy estate continues post-confirmation unless the plan or confirmation order dictate otherwise.

However, at least three courts of appeals have found that in those circumstances where confirmation revests property in the debtor, the estate terminates. *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 587, 590 (9th Cir. 1993); *In re Baroni*, 36 F.4th 958, 972–73 (9th Cir. 2022) (involved an individual debtor); *In re Resorts Int'l*, 372 F.3d 154, 164–65 (3d Cir. 2004)

b. Chapter 13

i. Property of the Estate: 11 U.S.C. § 1306

In addition to § 541, § 1306 defines property of the estate. This provision is substantially similar to § 1115.

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11 U.S.C. § 1306

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

ii. Timing of Vesting: 11 U.S.C. § 1322(b)

While § 1327(b) vests property of the estate in the debtor, § 1322(b), which controls the chapter 13 plan, also allows for the plan to provide for vesting.

11 U.S.C. § 1322(b)(9)

(b) Subject to subsections (a) and (c) of this section, the plan may—

. . .

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity.

For further analysis, see Charissa Potts, *The State of the Chapter 13 Estate: Miseducation of §§ 1306 and 1327*, 38 AM. BANKR. INST. J. 32 (2019).

c. Subchapter V of Chapter 11

For entity debtors under Sub V, § 1115 does not apply. But unlike in a traditional chapter 11, the scope of property of the estate appears to be affected by whether the confirmation is consensual.

i. Consensual Plans

Under § 1191(a), the standard is the same as under a traditional chapter 11 plan.

11 U.S.C. § 1191(a)

(a) Terms.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

ii. Nonconsensual Plans

Section 1191(b) provides for a cramdown in a Sub V plan. But § 1186(a) seems to displace § 1141(b) in that scenario.

11 U.S.C. § 1191(b)

(b) Exception.—
Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1186

(a) Inclusions.—If a plan is confirmed under section 1191(b) of this title, property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

(b) Debtor Remaining in Possession.—
Except as provided in section 1185 of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

For individual debtors under Sub V, § 1181(a) replaces § 1115. This means that a debtor's post-petition income is not property of the estate. Otherwise, the timing of vesting is the same as for entity debtors.

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Part II: The Theories of Vesting

Most cases interpreting the meaning of "vesting" under the Bankruptcy Code do so in the chapter 13 context. These issues require courts to reconcile apparently conflicting sections of the Bankruptcy Code: §§ 541, 1306, and 1327. Courts have applied at least five approaches in determining what happens to the estate once property revests in the debtor. For general analysis of these theories, see Robert Drummond, *Post-Confirmation Jurisdiction in Chapter 13: Is Vesting an Issue?* 43 AM. BANKR. INST. J. 18 (2024) (discussing five theories of vesting).

I. Five Theories of Vesting

a. Estate Termination Approach

Defined: Upon confirmation, all property of the estate revests in the debtor. Unless the plan or the confirmation order says otherwise, the bankruptcy estate no longer exists.

Cases: *In re Jones*, 420 B.R. 506 (B.A.P. 9th Cir. 2009); *In re Talbot*, 124 F.3d 1201 (10th Cir. 1997) (describing theory).

Advantages:

- Same as a standard chapter 11 plan.
- Supported by the legislative history. *See* H.R. Rep. No. 95-595, at 276 (1977) ("The administrative reality [is] that most chapter 13 estates will only remain open for 1 or 2 months until confirmation of the plan at which time § 1327(b) . . . will almost always revest title to property of the estate in the debtor.").
- Enables debtor to deal with property as they see fit and allows post-petition creditors to pursue property without court's permission.

Disadvantages:

- The property is no longer protected by the automatic stay. *See* 11 U.S.C. § 362(c)(1).

b. Estate Preservation Approach

Defined: No matter whether property revests in the debtor upon confirmation, the bankruptcy estate remains intact until the case is terminated, converted, or closed. The estate includes all property the debtor owned as of the petition date plus all income and property the debtor earns or acquires while the case is pending.

Cases: *In re Baker*, 620 B.R. 655 (Bankr. D. Colo. 2020); *In re Talbot*, 124 F.3d 1201 (10th Cir. 1997) (describing theory).

Advantages:

- Protection of the automatic stay.
- Consistent with 11 U.S.C. § 1306(a).

- If the case converts to chapter 7 post-confirmation, the estate will be as large as possible, which protects unsecured creditors. *See* 11 U.S.C. § 348(f).

Disadvantages:

- Inconsistent with 11 U.S.C. §§ 1327(b) and 1322(b)(9).
- Debtor must obtain court approval to use or dispose of property outside of ordinary course.
- Could give rise to large administrative expenses under § 503(b)(1)(A).

c. Conditional Vesting Approach

Defined: Perhaps a variation of the Estate Preservation Approach, this theory states that all property is property of the estate. But, the debtor has "an immediate and fixed right to the future enjoyment of [that property.]" The debtor's right to that future enjoyment becomes final once the debtor completes the plan and earns a discharge.

Cases: *In re Baker*, 620 B.R. 655 (Bankr. D. Colo. 2020) (describing conditional approach): *In re Mullins*, 2009 WL 3160361, at *3–*4 (S.D.W. Va. Sep. 30, 2009) (same).

d. Estate Transformation Approach

Defined: Unlike the other theories, this theory is more difficult to define. Courts applying this approach generally view property of the estate as any asset necessary to fulfill the plan. This typically includes the debtor's net income, but could also include a vehicle used to get to work in order to earn that income.

Cases: *Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333 (11th Cir. 2000) (but note that the 11th Circuit later adopted the replenishment approach); *In re Heath*, 115 F.3d 521 (7th Cir. 1997).

e. Estate Replenishment Approach

Defined: All preconfirmation property vests in the debtor upon confirmation, and any property acquired after confirmation becomes new property of the estate.

Cases: *In re Marsh*, 647 B.R. 725 (Bankr. W.D. Mo. 2023); *In re Larzelere*, 633 B.R. 677 (Bankr. D. N.J. 2021); *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008); *In re Barbosa*, 236 B.R. 540 (Bankr. D. Mass. 1999), *aff'd* 235 F.3d 31 (1st Cir. 2000).

Advantages:

- Consistent with § 1306(a).

Disadvantages:

- Difficulty monitoring and enforcing debtor's use of estate property.

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- The most value estate assets (i.e., car, house) leave estate and vest in debtor.

II. Competing Interpretations: The Fourth Circuit

The Fourth Circuit has issued a series of five opinions on post-confirmation modifications. The latter two cases appear to conflict with the first three.

a. ***In re Arnold*, 869 F.2d 240 (4th Cir. 1989):** Following confirmation of his chapter 13 plan, the debtor's income increased. The chapter 13 trustee then moved to modify the terms of the confirmed plan in order to increase the amount of money paid in the monthly plan payments. The Fourth Circuit held that the creditors were entitled to "share some of the wealth" in order to avoid a windfall to the debtor.

b. ***In re Murphy*, 474 F.3d 143 (4th Cir. 2007):** The chapter 13 debtor's plan provided that (1) all property would vest in the debtor upon plan confirmation and (2) that the debtor would retain his interest in real property—a condominium. But just over one year after confirmation, the debtor chose to sell the condo. The sale price exceeded the value of the property as contemplated at confirmation, and the chapter 13 trustee moved to modify the plan in order to capture that increased value. Again, the Fourth Circuit determined that the creditors to "share part of [the debtor's] newfound financial gains." Citing *Arnold*, the court stated that "a debtor cannot use plan confirmation as a license to shield himself from the reach of his creditors when he experiences a substantial and unanticipated change in his income."

c. ***Carroll v. Logan*, 735 F.3d 147 (4th Cir. 2013):** Following confirmation of their chapter 13 plan, the debtors inherited $180,000. But this occurred more than 180 days after the petition date. *See* 11 U.S.C. § 541(a)(5). Nonetheless, the Fourth Circuit determined that this inheritance entered the estate under 11 U.S.C. § 1306(a), and that creditors were entitled to the windfall.

d. ***Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024):** The chapter 13 debtor filed her plan on the jurisdiction's standardized chapter 13 form plan, which required that property revest in the debtor at discharge. The debtor instead struck through that provision and provided that property would revest upon plan confirmation. The bankruptcy court ruled that the debtor could not provide for vesting of property in contradiction to the form plan, and the district court affirmed. On appeal, the Fourth Circuit reversed, finding that the local rules—i.e., the form plan—could not override the debtor's right to choose when vesting occurs under 11 U.S.C. § 1322(b)(9). The Fourth Circuit also determined that the local rule injured the debtor in fact: rather than have absolute control over her property, the delayed vesting required the debtor to obtain court approval after notice and a hearing before making any major decisions.

e. ***Sugar v. Burnett*, 130 F.4th 358 (4th Cir. 2025):** The chapter 13 debtor confirmed a plan that provided for revesting upon confirmation subject to the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. One such local rule

required the debtor to obtain court authorization to dispose of property worth more than $10,000. Following confirmation, the debtor sold her home without court authorization on the basis that property had revested in her and she no longer needed court approval under the Bankruptcy Code. The Bankruptcy Court rejected this argument, dismissed the case with a five-year bar to refiling, and sanctioned the debtor's attorney for willfully advising the debtor to violate the local rule. On appeal, the Fourth Circuit determined that the debtor was required to comply with the local rule because the terms of the confirmed plan expressly required such, notwithstanding that property had revested in the debtor at confirmation.

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Part III: The Effect of Conversion

As set forth above, determining what property belongs to whom at plan confirmation can be a tricky inquiry. This becomes more complex when a case is converted.

I. Chapter 13 Cases

a. 11 U.S.C. § 348(f)

When property of the estate revests in the debtor upon confirmation, the import of § 348(f) becomes unclear. For example, when a debtor converts the case in bad faith, § 348(f)(2) seems to make the estate smaller by limiting property of the post-conversion estate to that held by the estate as of the conversion date. Courts have found difficulty with other provisions of § 348(f) as well.

11 U.S.C. § 348(f)

(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the filing of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

b. Illustrative Example

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Scenario:

An individual files a chapter 13 petition in 2021 in a jurisdiction with a $21,500 homestead exemption. The debtor confirmed a plan proposing to cure prepetition arrears on a mortgage with a $300,000 balance on a home worth $350,000. This means they had $28,500 in equity as of the petition date. Now it's 2024, and the debtor lost their job and defaulted on plan payments. The case was converted to chapter 7. The home's value has increased to $450,000, so the non-exempt equity has increased to $128,500.

Questions:

Who does this extra equity belong to?
What does this have to do with vesting?

Explanation:

The chapter 7 trustee will assert that the property, i.e., the actual house, constituted property of the estate as of the petition date. If the plan revested the house in the debtor upon plan confirmation, then the house is now property of the chapter 7 estate under § 348(f)(1)(A).

The debtor argues instead that the value of the property subject to distribution to creditors as of the petition date belongs to the estate. Without a finding under § 348(f)(2), the chapter 7 estate is limited to the property of the estate as of the petition date: the $28,500 in non-exempt equity.

c. Caselaw

i. ***Goetz v. Weber (In re Goetz)*****, 95 F.4th 584 (8th Cir. 2024):** Following confirmation of the debtor's chapter 13 plan, the case was converted to one under chapter 7. In the interim, the value of the residential real property increased and the debtor made payments toward the mortgage. The debtor moved for the Bankruptcy Court to compel abandonment of the property by the trustee under 11 U.S.C. § 544(b). The debtor argued that the post-petition, pre-conversion increase in equity must did not accrue to the benefit of the estate. The trustee argued that this equity belonged to the estate under § 348(f). The Bankruptcy Court determined that the post-petition, pre-conversion increase in equity belonged to the estate. After the Bankruptcy Appellate Panel for the Eighth Circuit upheld the Bankruptcy Court, the Eighth Circuit affirmed.

ii. ***Castleman v. Burman (In re Castleman)*****, 75 F.4th 1052 (9th Cir. 2023):** While the Ninth Circuit reached the same result as *Goetz*, the Ninth Circuit analyzed the issue by starting with the "plan text" of § 348(f)(1)(A). Because "property of the estate at the time of the original filing that is still in debtor's possession

at the time of conversion once again becomes part of the bankruptcy estate," increases in value also constitute estate property.

iii. ***Rodriguez v. Barrera (In re Barrera)*, 22 F.4th 1217 (10th Cir. 2022):** The Tenth Circuit reached a result that may seem contrary to both *Goetz* and *Castleman*, by allowing the debtors to retain the post-petition appreciation in the value of their home. After confirming a chapter 13 plan, the debtors sold their residence, claimed a homestead exemption, and realized significant non-exempt proceeds due to the property's post-petition appreciation. When the debtors thereafter converted their case to chapter 7, the trustee attempted to recover for the estate any proceeds exceeding the amount of the homestead exemption. The Tenth Circuit explained that the proceeds realized from the post-confirmation, pre-conversion sale of the homestead are not identical to the underlying property (the homestead) the debtors owned on the chapter 13 petition date; so, the proceeds do not become property of the converted chapter 7 estate under 11 U.S.C. § 348(f)(1)(A).

iv. ***In re Michael*, 699 F.3d 305 (3d Cir. 2012):** As a matter of first impression, Judge Ambro determined that under § 348(f), the post-conversion estate consists of property existing as of the petition date remaining in the possession or control of the debtor as of the date of conversion. *Id*. at 310. Under § 1327(b), property obtained post-petition that would fall into the estate under § 1306(a) is "under the debtor's control" for purposes of § 348(f). *Id*.

II. Chapter 11 Cases

a. Traditional Chapter 11 Plans

In the chapter 11 context, courts have reached a wide variety of conclusions. Some courts have held that conversion from chapter 11 to chapter 7 does not revest in the estate property that vested in the debtor upon plan confirmation unless the plan or confirmation order so provided. *See, e.g.*, *In re L & T Mach., Inc.*, 2013 WL 3368984, at *5–*6 (Bankr. D. Kan. July 3, 2013) (because chapter 11 plan's terms revested property in debtor at confirmation, court dismissed chapter 11 case rather than convert to chapter 7 because estate would have contained no property); *In re Freeman*, 527 B.R. 780, 787–88 (Bankr. N.D. Ga. 2015) (same). Other courts have found that property of the estate in a case converted from chapter 11 consists of property owned by the debtor as of the petition date, the confirmation date, or the date of conversion.

In *In re Baroni*, 36 F.4th 958, 972–73 (9th Cir. 2022), the individual debtor confirmed a chapter 11 plan. Six years later, her case was converted to one under chapter 7. Although the debtor argued that her converted estate contained no assets given that the plan provided for revesting in the debtor upon confirmation, the Ninth

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Circuit instructed lower courts to take a "holistic approach" in determining whether the plan or confirmation order deviated in § 1141(b)'s default rule. Although the property revested in the debtor upon confirmation, the plan also provided that the Bankruptcy Court retained jurisdiction over disputed claims, required the debtor to fund a disputed claims reserve, and maintained the automatic stay through discharge. The Ninth Circuit stated that the fact of the ongoing automatic stay favored continuation of the estate. Further, allowing unadministered assets to revert to the debtor upon conversion would "frustrate the intent of the Plan and is contrary to many of its provisions."

See also In re L & T Mach., Inc., 2013 WL 3368984 (Bankr. D. Kan. July 3, 2013) (dismissing case on basis that because property revested in debtor upon confirmation of chapter 11 plan, post-confirmation conversion to chapter 7 would create an estate with no assets).

b. Subchapter V Plans

Given that the Subchapter V provisions remain relatively new, the caselaw is still developing. Sections 1185, 1186, and 1191 govern.

11 U.S.C. § 1185

(a) In General.—
On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

(b) Reinstatement.—
On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

11 U.S.C. § 1186

(a) Inclusions.—If a plan is confirmed under section 1191(b) of this title, property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or

converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

(b) Debtor Remaining in Possession.—
Except as provided in section 1185 of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

11 U.S.C. 1191

(a) Terms.—
The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

(b) Exception.—
Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

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Part IV: The Effect of Vesting "Free and Clear"

A debtor's ability to control—and a creditor's ability to levy or recover against—property post-confirmation depends on the vesting theory used by the court. For example, the conflicting language between §§ 1306 and 1327—which substantially mirrors the chapter 11 provisions—leads courts to conflicting conclusions on issues as integral to control of the bankruptcy estate as motions for relief from the automatic stay, a debtor's ability to pursue causes of action, and a debtor's ability to sell or transfer property.

I. Relief From Stay

One thing is clear: the automatic stay prohibits any act to obtain possession of or levy against property of the estate. But what does this mean when a confirmation order vests property of the estate in the debtor?

a. ***In re Sedgwick*, 266 B.R. 185 (Bankr. N.D. Cal. 2001):** When property revests in a chapter 13 debtor at confirmation, 11 U.S.C. § 362(a)(5) continues to prevent creditors from levying against property *of the debtor*. And based on § 362(c), the automatic stay continues "until the earliest of the time the case is closed, the case is dismissed, or, in a Chapter 13 case, the time the debtor is discharged."

b. ***Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333 (11th Cir. 2000):** Under the Estate Transformation Approach, the automatic stay does not apply to property that revests in the debtor. Therefore, the automatic stay does not apply to post-confirmation mortgage payments made outside the plan.

c. ***In re Kolenda*, 212 B.R. 851 (W.D. Mich. 1997):** The chapter 13 debtor's property revested after confirmation. He then purchased a vehicle after plan confirmation. Under § 1306(a), property obtained before the case is closed, converted, or otherwise terminated continues to be property of the estate. Therefore, "confirmation is not relevant to determining what property is part of the estate." Under this analysis, the vehicle became estate property notwithstanding that confirmation vested all property in the debtor. Employing the Estate Preservation Approach, the Bankruptcy Court held that a creditor must obtain relief from stay in order to repossess a vehicle purchased post-confirmation.

d. For other cases discussing this issues, *see e.g.*, *In re Camacho*, 311 B.R. 186, 191–92 (Bankr. E.D. Mich. 2004) (even though property vested in the debtor on confirmation of the chapter 13 plan and thereby ceased to be property of the estate that was protected by § 362(a)(4), it continued to be protected by the automatic stay as property of the debtor under § 362(a)(5)); *In re Davenport*, 268 B.R. 159, 165 (Bankr. N.D. Ill. 2001) ("[t]he stay . . . also protects property vested in the debtor, pursuant to 11 U.S.C. § 1327(b), after confirmation of a Chapter 13 Plan" (citing § 362(a)(5)); *In re Concrete*

Structures, Inc., 261 B.R. 627, 645 (Bankr. E.D. Va. 2001) (same in chapter 11, quoting legislative history, and gathering cases).[1]

e. For a further analysis of relief from stay motions following confirmation of a chapter 13 plan, see David Gray Carlson, *The Chapter 13 Estate and Its Discontents*, 17 AM. BANKR. INST. L. REV. 233, 247 (2009).

II. Pursuing Causes of Action

Under the expansive definition of property, a cause of action is an interest of the debtor swept into the estate. 11 U.S.C. § 541(a). A debtor must disclose any pending or potential causes of action in its schedules. Upon creation of the estate, the cause of action vests in the trustee for chapter 13 debtors and in the debtor-in-possession for chapter 11 debtors. This effectively displaces the standing of the debtor to pursue such causes of action. But in those instances when plan confirmation revests property of the estate back in the debtor, we again are confronted with the issue of what this means for a debtor's ability to control that property—i.e., the claim itself.

a. ***In re Calixto*, 648 B.R. 119 (Bankr. S.D. Fla. 2023):** Following plan confirmation, the debtor suffered a personal injury and thereby obtained a tort cause of action. In response to the debtor's state court lawsuit, the defendant moved to dismiss on the basis that the debtor had no standing to bring the claim because the cause of action was estate property and the debtor had never amended her bankruptcy schedules to disclose the tort claim. The Bankruptcy Court first determined that the tort claim became estate property under § 1306(a)(1). Binding Eleventh Circuit caselaw required the debtor to amend her schedules to disclose the claim. However, the Bankruptcy Court found that even if the debtor had disclosed the tort claim, doing so would have no effect on her estate—the debtor had already paid 100% of the claims of the general unsecured creditors.

b. ***In re Hazelwood*, 570 B.R. 557 (Bankr. N.D. Tex. 2017):** A chapter 13 debtor properly disclosed a cause of action in his schedules. He did not pursue—or seek abandonment of—the claim before plan confirmation. At confirmation, all property revested in the debtor. The parties then litigated the claim, and the debtor sought to retain the non-exempt proceeds. The chapter 13 trustee moved to modify the plan or compel turnover of those non-exempt proceeds. The Bankruptcy Court

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[1] The court in *Concrete Structures* did not address the fact that the stay "of any other act under subsection (a)" (including the stay of acts against property of the debtor) terminates on discharge, which in the case of a non-individual chapter 11 debtor and a subchapter V debtor with a plan confirmed under § 1191(a), normally occurs on confirmation of the plan. *See U.S. Dep't of Air Force v. Carolina Parachute Corp.*, 907 F.2d 1469, 1474 (4th Cir. 1990) ("'Consequently, since Confirmation of the Plan has the dual effect of revesting the debtor with title to its property and discharging the debtor from all dischargable [sic] debts, there can be no further application of the automatic stay after confirmation'" (quoting *In re Herron*, 60 B. R. 82, 83–84 (Bankr. W.D. La. 1986))).

determined that because neither the confirmed plan nor the confirmation order preventing the lawsuit from revesting in the debtor, the parties were bound by that order—i.e., the lawsuit vested entirely free and clear in the debtor under § 1327(c).

c. For a further discussion of these issues, see ROCHELLE'S DAILY WIRE, *Are Chapter 13 Creditors Entitled to Proceeds from a Post-Confirmation Tort Claim?* AM. BANKR. INST. (Feb. 7, 2023); and David Gray Carlson*, The Chapter 13 Estate and Its Discontents*, 17 AM. BANKR. INST. L. REV. 233, 253–55 (2009).

III. Selling Property

This issue has much in common with whether the appreciation in value of estate property accrues to the benefit of the debtor or of the estate. And like the cases analyzing that issue, the outcome largely depends on the theory of vesting used by the court.

a. ***In re Marsh*, 647 B.R. 725 (Bankr. W.D. Mo. 2023):** The chapter13 plan vested property of the estate in the debtors. This included their home, which they listed at $140,000 in their schedules. Post-confirmation, the debtors sold their home with court approval for $210,000 and then moved to retain the $78,000 non-exempt proceeds notwithstanding that their plan had provided for no distribution to unsecured creditors. The chapter 13 trustee moved to modify the plan to require a 100% payment to the unsecured creditors. First, the Bankruptcy Court determined that the post-petition appreciation of value in the real property—which the debtors only realized via sale post-confirmation—constituted a post-confirmation asset. Under the Estate Replenishment Approach, this means that the home became the debtors' property while the appreciation became estate property under § 1306. The *Marsh* court disagreed with the *Larzelere* court's determination that the post-confirmation realization of appreciation in value from the sale of the home—which revested in the debtors—constituted debtor property.

b. ***In re Larzelere*, 633 B.R. 677, 683 (Bankr. D.N.J. 2021):** At plan confirmation, property vested in the debtor. Under the Estate Replenishment Approach, the prepetition property that had revested in the debtor did so free and clear of all interests of the estate under § 1327(c). Therefore, the debtor did not need court authority to dispose of his own property. Even where the value of the property had increased between the petition date and the sale date, such appreciation did not fall into the estate under the Replenishment theory. *See also In re Elassal*, 654 B.R. 434 (Bankr. E.D. Mich. 2023) (same).

c. ***In re Baker*, 620 B.R. 644 (Bankr. D. Colo. 2020):** Similarly to the *Larzelere* case, the Estate Termination Approach holds that confirmation of a plan providing for revesting in the debtor terminates the bankruptcy estate. Therefore, the court no longer has authority to approve a debtor's choice to sell or transfer assets that had revested in him. *See also In re Black*, 609 B.R. 518 (B.A.P. 9th Cir. 2019) (same); *In re Golden*, 528 B.R. 803 (Bankr. D. Colo. 2015) (same).

d. For further analysis of this issue, see David Gray Carlson, *The Housing Bubble & Consumer Bankruptcy (Parts III and IV)*, 97 AM. BANKR. L. J. 611, 647–53 (2023) (discussing property of the estate in a post-conversion chapter 7 case); and David Gray Carlson*, The Chapter 13 Estate and Its Discontents*, 17 AM. BANKR. INST. L. REV. 233, 256–64 (2009).

IV. Delayed Vesting

As discussed throughout this panel, the Bankruptcy Code gives chapter 13 debtors the choice to determine when property vests. 11 U.S.C. § 1322(b)(9). But this provision may conflict with § 1327. Courts to have confronted the issue have come out opposite ways.

a. ***Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024):** Because the Bankruptcy Code gives the debtor the discretion to decide when and in whom property vests, the bankruptcy court may not require vesting at a certain time.

b. ***In re Cherry*, 963 F.3d 717 (7th Cir. 2020):** Under § 1322(b)(9), the default rule is that confirmation vests property in the debtor *unless otherwise provided*. For property to vest at a different time, the debtor must provide a "good reason."

c. For further analysis, see Jonathan Seymour, *The Limited Lifespan of the Bankruptcy Estate*, 37 EMORY BANKR. DEV. J. 1, 43-54 (2020) (discussing delayed vesting theories in both consumer and business cases); Caleb Chaplain & Vincent Roldan, *Rules Are Made to Be Broken . . . If in Conflict with the Code*, 43 AM. BANKR. INST. J. 22 (2024) (discussing *Trantham*).

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Part V: Confirmation & Liquidating Trusts

Another issue that the panel will discuss is the difference between "vesting" and "transfer" of property upon confirmation. Does this terminology matter? As noted by *In re Baroni*, 36 F.4th 958, 972–73 (9th Cir. 2022), courts will take a "holistic view" of whether vesting upon confirmation places all property in the debtor.

I. The Bankruptcy Code

As with all inquiries in a bankruptcy case, we begin with the Code. In addition to §§ 1227(b), 1327(b), and 1141(b), other sections also speak to vesting. This indicates that whether property revests in a debtor is not an "all or nothing" approach.

11 U.S.C. § 1123

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

. . .

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

. . .

(b) Subject to subsection (a) of this section, a plan may—

. . .

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

11 U.S.C. § 1222

(b) Subject to subsections (a) and (c) of this section, the plan may—

. . .

(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

. . .

(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity.

11 U.S.C. § 1322(b)

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(b) Subject to subsections (a) and (c) of this section, the plan may—
. . .
(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity.

11 U.S.C. § 1325

(a) Except as provided in subsection (b), the court shall confirm a plan if—
. . .
(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that—
(I) the holder of such claim retain the lien securing such claim until the earlier of—
(aa) the payment of the underlying debt determined under nonbankruptcy law; or
(bb) discharge under section 1328; and
(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
(iii) if—
(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

Do these provisions indicate that "vesting" versus "transferring" is a matter of volition of the recipient?

a. Cases Interpreting These Provisions

i. ***In re Consol. Pioneer Mortg. Entities*****, 264 F.3d 803 (9th Cir. 2001):** Upon confirmation of a chapter 11 plan, assets, including causes of action, transferred to a trust for the benefit of creditors. The plan was thereafter converted to chapter 7. The Ninth Circuit determined that the assets transferred to the trust revested in the converted estate because there was no plan provision providing otherwise.

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ii. ***In re T.S.P. Indus., Inc.*, 117 B.R. 375 (Bankr. N.D. Ill. 1990):** On the other end of the spectrum, the Bankruptcy Court determined that post-confirmation conversion of a chapter 11 case to one under chapter 7 failed to reconstitute property within the estate when the chapter 11 plan contained no explicit directions for what happens on default of the plan.

iii. For further analysis, see Luis Salazar, *Plan to Fail: Remedies for Postconfirmation Default*, 15 J. BANKR. L. & PRAC. 6, nn. 25-32 (Dec. 2006) (majority rule is that post-confirmation conversion will not return assets transferred out of estate).

II. Dirt for Debt Cases

In the same way that the Bankruptcy Code provides that a debtor may choose when property vests, some courts have also interpreted the Code to allow debtors to choose in which entity the property vests as well. These cases are colloquially known as "dirt for debt," in which the debtor's plan provides for the satisfaction of the creditor's claim by providing the "indubitable equivalent" of the creditor's collateral—typically, real property. *See In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346 (5th Cir. 1989) (establishing the general rule).

a. Dirt for Debt Cases

Courts are split on the interplay of the terms "surrender," "vest," and "payment." Some require "vest" to import state law requirements of acceptance of title, while others do not.

i. ***In re Sagendorph*, 562 B.R. 545 (D. Mass. 2017):** The Bankruptcy Court had approved a plan that vested the debtor's real property in the secured creditor notwithstanding that creditor's opposition. On appeal, the District Court reversed. That court stated the following proposition:

> In contrast, 'vest' is generally defined as "[t]o confer ownership (of property) on a person," "[t]o invest (a person) with full title to property," or "[t]o give (a person) an immediate, fixed right of present or future enjoyment." BLACK'S LAW DICTIONARY (10th ed. 2014). Vesting is not the unilateral act of the grantor, and elementary principles of property law make this clear. *See, e.g.*, *In re Weller*, 548 B.R. 392, 394 (Bankr. D. Mass. 2016) (finding "a debtor complies with the 'surrender' requirement of § 1325(a)(5)(C) by ceding the debtor's rights and making such property available to the creditor, but 'what a creditor then does, or doesn't do, with that property is left to the creditor's discretion under non-bankruptcy law" (quoting *In re Cormier*, 434 B.R. 222, 229 (Bankr. D. Mass.

2010))). Vesting refers instead to the acceptance of surrender by the grantee, which consummates the legal act of transfer.

On a practical note, this begs the question: if "vest" has the same meaning as "transfer," then why did Congress use different terms throughout the Bankruptcy Code? Regardless of whether the term used is "vest" or "transfer," the Code refers to "property of the estate." Does it matter, then, that there's a split among courts as to whether claims held by the trustee or debtor-in-possession are property of the estate?

ii. For other cases discussing the dirt for debt concept in various contexts, see Irving Walker & Jonathan Grasso, *Can a Debtor Force a Secured Creditor to Accept "Dirt for Debt"?* THE PRAC. REAL EST. LAW. 41, 47–50 (2015) (collecting cases for pure and partial debt-for-dirt plans); *see also* Selbst, Smith, & Stockman, EXPERT VIEWS, *The Rise of the Indubitable Equivalent 'Cram-Up' Plans*, REORG (Dec. 1, 2022).

III. Selling Estate Causes of Action

Until recently, there were few cases finding that a debtor could sell Chapter V causes of action through a plan or otherwise. While the Ninth Circuit had approved the practice as early as 1999, there was a dearth of caselaw on the topic from other courts.

a. ***In re S. Coast Supp. Co.*, 91 F.4th 376 (5th Cir. 2024):** Before filing its chapter 11 petition, an officer of the corporation made an $800,000 loan to the corporation. The corporation then repaid $320,000 before filing its petition. Before plan confirmation, the debtor filed an adversary proceeding against the officer to recover the payment under § 547. The confirmed plan provided that the preference action would be sold to a lender, in return for which the lender waived its lien on $700,000 of collateral and its right to seek an administrative claim.

After the reference was withdrawn, the lender continued the preference action in district court. The corporate officer moved to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. Pro. 12(b)(1). The district court granted the motion because the preference claim was not property of the estate under § 541(a), among other reasons. On appeal to the Fifth Circuit, the court first determined that preference actions are generally estate property under § 541(a). As estate property, a preference action may be sold under § 363(b). Because the lender validly purchased the claim, it had standing to sue.

The Fifth Circuit relied on similar holdings by other appellate courts to reach this determination. *See In re Simply Essentials LLC*, 78 F.4th 1006 (8th Cir. 2023); *In re Lahijani*, 325 B.R. 282 (B.A.P. 9th Cir. 2005); *In re P.R.T.C., Inc.*, 177 F.3d 774 (9th Cir. 1999).

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b. For further analysis, see Anderson & Mashburn-Myrick, *Are Chapter 5 Claims Assets of the Estate that a Trustee Can Sell?* 43 AM. BANKR. INST. J. 68, 68 (2024) (discussing circuit split re possibility of selling chapter 5 actions).

Faculty

Hon. Hannah L. Blumenstiel is a U.S. Bankruptcy Judge for the Northern District of California in San Francisco. Prior to her appointment on Feb. 11, 2013, Judge Blumenstiel was an associate (2003-08) and then a partner (2008-12) with Winston & Strawn LLP, where she focused her practice on creditors' rights litigation in state and federal court, including bankruptcy court. From 2001-03, Judge Blumenstiel was an associate with Murphy Sheneman Julian & Rogers LLP, where she represented debtors, creditors and trustees in bankruptcy cases and adversary proceedings. She served as a law clerk to Hon. Charles M. Caldwell of the U.S. Bankruptcy Court for the Southern District of Ohio (Eastern Division) from 1998 to 2001, and from 1997-98, she represented the State of Ohio's interests in bankruptcy cases as an assistant attorney general with the Revenue Recovery Section of the Ohio Attorney General's Office. Judge Blumenstiel is ABI's Vice President-Research Grants and serves as an Executive Editor of the ABI Journal. She received her J.D. from Capital University Law School in 1997 while working full-time for the Columbus Bar Association as director of its pro bono initiative, "Lawyers for Justice," and her B.A. from Ohio State University in 1992.

Hon. Brian T. Fenimore is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Aug. 31, 2017. He served five years as Chief Judge, during which time he served on the Federal Judicial Center's Planning Committee for the 2024 National Leadership Conference for Chief Judges of U.S. District and Bankruptcy Courts. Prior to his appointment to the bench, he was a partner in the Kansas City, Mo., office of Lathrop & Gage LLP for more than 25 years and co-chaired its Banking & Creditors' Rights practice area, representing debtors, creditors and many other parties in interest. He also represented borrowers and lenders in problem loan matters, including loan enforcement, guarantor liability, workouts, reorganizations and bankruptcies throughout the U.S. Judge Fenimore is admitted to practice in Kansas and Missouri, and before the U.S. Bankruptcy Courts for the Eastern and Western Districts of Missouri and the District of Kansas, as well as the U.S. District Courts for the District of Kansas and the Eastern and Western Districts of Missouri. As a member of the National Conference of Bankruptcy Judges, he currently serves on the Federal Rules Advisory Committee and the Budget Initiatives Committee, and previously served on the Membership Services and New Member Committees. Judge Fenimore is AV-rated by Martindale-Hubbell and has been listed in *The Best Lawyers in America* every year since 2003, among other listings. He is also a frequent speaker and ABI member. Judge Fenimore received his B.S. *magna cum laude* in 1988 in agricultural economics from the University of Missouri-Columbia and his J.D. in 1990 from the University of Michigan Law School, after which he clerked for Hon. Arthur B. Federman.

Hon. Paul R. Hage is a U.S. Bankruptcy Judge for the Eastern District of Michigan in Detroit, sworn in on Sept. 30, 2024. Prior to his appointment to the bench, he was co-chair of the bankruptcy group at Taft, Stettinius & Hollister, LLP. Judge Hage is a member of ABI's Executive Committee and serves as Executive Editor of the *ABI Journal*. He is a Fellow in the American College of Bankruptcy and serves as co-director of the Conrad B. Duberstein National Bankruptcy Moot Court Competition. In 2017, Judge Hage was selected as a member of ABI's inaugural "40 Under 40" class. He received his bachelor's degree from James Madison College at Michigan State University, his J.D. from Loyola University Chicago School of Law and his LL.M. in bankruptcy from St. John's University School of Law.

Hon. Benjamin A. Kahn is a U.S. Bankruptcy Judge for the Middle District of North Carolina in Greensboro, sworn in on Feb. 3, 2014. He also is the chair of the Advisory Committee on Bankruptcy Judge Education for the Federal Judicial Center, for which he serves as one of the instructors for Phase I and Phase II Orientation for Newly Appointed Bankruptcy Judges. Judge Kahn is a member of the U.S. Judicial Conference Advisory Committee on the Bankruptcy Rules, and is chair of its Forms Subcommittee. In addition, he is a conferee of the National Bankruptcy Conference, for which he previously served on the Executive Committee and currently serves as chair of the Committee on the Court System and Bankruptcy Administration and on the Nominating Committee. Judge Kahn is a contributing author and member of the board of editors for *Collier on Bankruptcy* and served as the judicial chair of ABI's Southeast Bankruptcy Workshop from 2019-23. Prior to his appointment, he was a member of Nexsen Pruet PLLC and clerked for Bankruptcy Judge Jerry G. Tart of the Middle District of North Carolina. Judge Kahn is Board Certified in Business and Consumer Bankruptcy Law by the American Board of Certification, for which he served as a member of its board of directors until his appointment to the bench. Prior to joining the bench, Judge Kahn was a certified mediator in North Carolina and was recognized as among the Top 10 North Carolina *Super Lawyers* across all practice areas for the two years immediately preceding his appointment, elected to the Legal Elite Hall of Fame by *Business North Carolina Magazine* in 2014 as the category winner in North Carolina for Bankruptcy, and was included among Band 1 bankruptcy practitioners in North Carolina in *Chambers and Partners USA*. A Fellow in the American College of Bankruptcy, he received his B.A. in political science and history in 1990, and his J.D. with honors in 1993, from the University of North Carolina at Chapel Hill.

Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI's Board of Directors, NCBJ, IWIRC, TMA and the Bankruptcy Section of the Atlanta Bar Association, and she has been a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017, and she served on the program's steering committee from 2022-23, the publications committee in 2023 as the judicial chair for ABI's Southeast Bankruptcy Workshop in 2024. She received her B.A. in political science from the University of Florida in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.

Eric E. Walker is a partner with Cooley LLP in its Business Restructuring Group in Chicago, where he focuses his practice on all aspects of financial restructuring, bankruptcy and litigation. He has represented virtually every major stakeholder in bankruptcy proceedings throughout the country. Mr. Walker has particular experience in restructuring hospital systems, senior-living facilities, continuing-care retirement communities (CCRCs), skilled nursing facilities (SNFs), behavioral health centers and diagnostic medical laboratories. His successful representation of the asset-purchaser in the Health Diagnostic Laboratories (HDL) bankruptcy case was awarded the 2016 Restructuring Deal of the Year (Under $100M) by The M&A Advisor, and he received an individual Band 5 ranking from *Chambers USA* in 2023. Mr. Walker also has experience in the hotel and hospitality industry and regularly represents hotel owners, developers, operators, lenders and major hotel brands in transactions, state and federal litigation, and bankruptcy. He represented the petitioners before the U.S. Supreme Court in *RadLAX Gateway Hotel LLC, et al. v. Amalgamated Bank* (Case No. 11-166), a landmark

chapter 11 bankruptcy case involving secured creditor cramdown. Mr. Walker has been recognized as a leading bankruptcy practitioner by *Chambers USA*, *Lawdragon* and the National Conference of Bankruptcy Judges. He is a member of ABI's inaugural class of "40 Under 40" (2017), and he currently serves on ABI's Board of Directors. He also is an executive editor of the *ABI Journal*, and serves on the advisory board of ABI's Health Care Program. He frequently writes and speaks on issues of bankruptcy and health care law. Mr Walker received his B.S.B.A. in finance in 2000 from Miami University and his J.D. in 2006 from the University of Connecticut School of Law, where he served on the *Connecticut Law Review*.